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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,228	07/02/2003	Salvatore Fiola	P03-235-FIO	4874
27107	7590	12/17/2004	EXAMINER	
RICHARD A. JOEL ESQ. 496 KINDERKAMACK ROAD ORADELL, NJ 07649			DEXTER, CLARK F	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/612,228

Applicant(s)

FIOLA, SALVATORE

Examiner

Clark F. Dexter

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:  
  
In paragraph 0002, line 1, the patent number attributed to Skoko is inaccurate.  
  
In paragraph 0003, line 2, "Nel" is misspelled.  
  
In paragraph 0004, line 2, the last patent number includes a period which is improper.  
  
Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 9, the recitation "having inner and outer surfaces gripping means on the inner surfaces ..." is awkwardly worded and vague and indefinite as to what is being set forth, and it seems that a comma --,-- is missing before "gripping".

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato et al., pn 6,128,996.

Sato discloses a device with almost every structural limitation of the claimed invention including end portions (e.g., 3), spaced opposing side members (e.g., 1), wherein the device includes gripping means as claimed (e.g., the inner and outer surfaces of component 1). Sato lacks the device being a one-piece molded unit. However, the Examiner takes Official notice that it is old and well known in the art to make such devices as one-piece molded units for the various well known benefits including easier and less expensive manufacturing. Davidson, pn 6,389,944 discloses one example of such a one-piece construction. Therefore, it would have been obvious to one having ordinary skill in the art to make the device of Sato (i.e., the components of Sato that correspond to the claimed features) as a one piece molded unit for the well known benefits including those described above.

Further, Sato lacks triangular guide members as set forth in claim 3. However, the Examiner takes Official notice that such guide members are old and well known in the art and provide various well known benefits including guiding the work piece into a desired working area. Therefore, it would have been obvious to one having ordinary skill in the art to provide triangular guide members on the device of Sato for the well known benefits including that described above.

Further, in the alternative, if it is argued that Sato does not teach or suggest gripping means, the Examiner takes Official notice that such gripping means are old and

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well known in the art and provide various known benefits including facilitating gripping of the device by a user and facilitating gripping of the work piece (e.g., a bagel) during cutting thereof. McLeod, pn 5,481,953 and Thompson, pn 5,946,998 disclose examples of devices having such gripping means. Therefore, it would have been obvious to one having ordinary skill in the art to provide such gripping means on the device of Sato for the well known benefits including those described above.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (703)308-1404. The examiner can be reached Monday through Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (703)308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Clark F. Dexter', is positioned above the printed name.

**Clark F. Dexter**  
**Primary Examiner**  
**Art Unit 3724**

cf  
December 13, 2004